



## STATEMENT OF THE CASE

Appellant-Defendant, Roger N. Thompson (Thompson), appeals his sentence for operating a vehicle while driving privileges were suspended as an habitual violator, a Class D felony, Ind. Code § 9-30-10-4, and leaving the scene of an accident, a Class B Misdemeanor, I.C. § 9-26-1-8.

We affirm.

## ISSUES

Thompson presents three issues on appeal, which we restate as:

- (1) Whether the trial court's failure to acknowledge mitigating factors proposed by Thompson was an abuse of discretion;
- (2) Whether the trial court abused its discretion by not separately stating its reasons for imposing maximum and consecutive sentences; and
- (3) Whether Thompson's sentence is inappropriate when the nature of his offense and character are considered.

## FACTS AND PROCEDURAL HISTORY<sup>1</sup>

On September 18, 2006, Thompson was driving a white Ford pick-up truck and hit a green mini-van parked at the Silver Tree Apartments in Milroy, Indiana. Michelle Hankins (Michelle) witnessed the collision from the window of her brother's apartment. The green

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<sup>1</sup> When reviewing the State's brief, we have noticed that there is clearly a missing portion from the "Statement of Facts." (See Appellee's Br. pp. 2-3). Page two ends mid-sentence discussing the event which led to the charges against Thompson, and page three begins with a new paragraph discussing the mitigating and aggravating factors found by the trial court.

mini-van belonged to her mother and was in the possession of her brother, Justin Hankins (Justin), at the time. After the collision, she went outside with Justin and confronted Thompson. She smelled alcohol on Thompson's breath and could tell that he was intoxicated. Thompson offered cash to Justin, asking that they not get the police involved, but Justin refused the money. Justin and Michelle went back into the apartment to call the police and Thompson "peeled off out of the parking lot." (Transcript p. 118).

On September 20, 2006, the State filed an Information charging Thompson with operating a motor vehicle while privileges are forfeited for life, a Class C felony, I.C. § 9-30-10-16, and leaving the scene of an accident, a Class B misdemeanor, I.C. § 9-26-1-8. On October 2, 2006, the State filed an amended Information charging Thompson with operating a motor vehicle while suspended as an habitual violator, a Class D felony, I.C. § 9-30-10-4, and leaving the scene of an accident, a Class B misdemeanor. On January 22 and 23, 2008, the trial court held a jury trial. After the close of evidence, the jury returned a verdict of guilty on both Counts.

On February 19, 2008, the trial court held a sentencing hearing and found no mitigating factors, but found Thompson's extensive criminal history to be an aggravating factor.<sup>2</sup> The trial court sentenced Thompson to three years executed for operating a motor

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<sup>2</sup> The trial court stated that it was relying upon all of Thompson's criminal history except for a charge for an "OWI" in Kentucky with an unknown disposition and a listing of a duplicate sentence. The remaining criminal history includes nearly twenty convictions for crimes such as public intoxication, possession of marijuana, operating a motor vehicle while intoxicated, battery, resisting law enforcement, and theft. (Appellee's App. pp. 3-5).

vehicle while suspended as an habitual violator, a Class D felony, and six months executed for leaving the scene of an accident, a Class B misdemeanor, and ordered those sentences to be served consecutively. Additionally, the trial court suspended Thompson's driving privileges for life.

Thompson now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### *I. Standard of Review*

Our supreme court clarified a defendant's right to appellate review of a trial court's sentencing decision by stating, "[s]o long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *aff'd on reh'g*, 875 N.E.2d 218. An abuse of discretion occurs if we find the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). The trial court no longer has any obligation to weigh aggravating and mitigating factors, and therefore cannot be said to have abused its discretion in failing to properly weigh those factors. I.C. § 35-38-1-7.1(d); *see also Anglemyer*, 868 N.E.2d at 491.

Additionally, we have the authority to review the appropriateness of a sentence authorized by statute through Appellate Rule 7(B). That rule permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Anglemyer*, 868 N.E.2d at 491.

## II. *Proposed Mitigating Factors*

Thompson first argues that the trial court failed to consider mitigating factors that were proposed. However, Thompson does not explain anywhere in his brief what those mitigating factors would be or give a citation directing us to where in the record we could find any evidence of mitigating factors presented to the trial court.<sup>3</sup> Therefore, this issue has been waived. *See Smith v. State*, 822 N.E.2d 193, 203 (Ind. Ct. App. 2005), *trans. denied*; *see also* Ind. Appellate Rule 46(A)(8)(a) (stating argument section of appellant’s brief must “contain the contentions of the appellant on the issues presented, supported by cogent reasoning [and] supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . .”).

## III. *Maximum and Consecutive Sentences*

Next, Thompson argues that the trial court abused its discretion by failing to articulate a reason for running his sentences consecutively separate from its reason for imposing the maximum sentence for each conviction. “A trial court may rely on the same reasons to impose a maximum sentence and also impose consecutive sentences.” *Echols v. State*, 722 N.E.2d 805, 808 (Ind. Ct. App. 2000). There is no requirement that the trial court identify the factors that supported a sentence enhancement separately from the factors that supported

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<sup>3</sup> Thompson’s brief states specifically: “however, despite evidence presented regarding mitigators, the trial court did not acknowledge or consider any mitigating factors (Appellant’s App. pp. 56-58).” However, upon our review of Appellant’s Appendix pages fifty-six through fifty-eight, we find the State’s witness list for trial and corresponding certificate of service and an Order In Limine regarding the admission of evidence of misconduct by Thompson.

consecutive sentences. *Blanche v. State*, 690 N.E.2d 709, 716 (Ind. 1998). Thus, we conclude that the trial court did not abuse its discretion by ordering Thompson to serve the maximum sentences for his crimes and for those sentences to run consecutively based upon Thompson's extensive criminal history.

#### IV. *Appropriateness of Thompson's Sentence*

We will interpret Thompson's final argument as a contention that his sentence is inappropriate when considering the nature of his offenses and his character.<sup>4</sup> The nature of Thompson's offenses is not particularly heinous: he hit a parked car with his vehicle, causing minor damage, and then left the scene of the accident. That being said, testimony at trial was that he was visibly intoxicated at the time, and drove away from the scene in a reckless manner, both acts which endanger the safety and well being of others. As for the nature of his character, Thompson has an extensive criminal history consisting of nearly twenty convictions dating back to 1988. Thompson clearly has a very limited regard for the

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<sup>4</sup> Thompson presents this third issue as: "Whether imposing the maximum sentence . . . was manifestly unreasonable under the circumstances." (Appellants' App. p. 3). "Manifestly unreasonable" is the former standard for independent review of sentences by appellate courts under Ind. Appellate Rule 7(B). That Appellate Rule was amended, effective January 1, 2003, and we now review sentences to determine if they are inappropriate in light of the nature of the offense and character of the offender. *See Neale v. State*, 826 N.E.2d 635, 639 (Ind. 2005).

laws of this state and the safety of others. In light of the nature of Thompson's offense, and especially in light of his character, we cannot say that his sentence is inappropriate.

### CONCLUSION

Based on the foregoing, we conclude that Thompson has waived for review any consideration of whether the trial court abused its discretion by failing to consider proposed mitigating factors; the trial court did not abuse its discretion by relying on Thompson's criminal history as an aggravating factor to impose maximum and consecutive sentences; and Thompson's sentence is not inappropriate when the nature of his offenses and character are considered.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.